



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: O’Gara Training and Services, LLC

File: B-404901.2

Date: July 28, 2011

Lawrence J. Sklute, Esq., Sklute & Associates, for the protester.
J. Alex Ward, Esq., Daniel E. Chudd, Esq., Damien C. Specht, Esq., and Krishanti Vignarajah, Esq., Jenner & Block LLP, for A-T Solutions, Inc., an intervenor.
James P. Winthrop, Esq., Department of the Navy, for the agency.
Paul E. Jordan, Esq., and Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation defined relevance of past performance in terms of magnitude (similarity in dollar value) and scope (similarity to experience defined in performance work statement), evaluation of protester’s past performance as neutral was unobjectionable; the agency reasonably found that, although protester’s past contracts were similar in magnitude, its experience under the past performance references was not similar in scope.

DECISION

O’Gara Training and Services, LLC, of Cincinnati, Ohio, protests the award of a contract to A-T Solutions, Inc. (ATS), of Vienna, Virginia, under request for quotations (RFQ) No. N00189-11-R-0014, issued by the Department of the Navy, Naval Supply Systems Command for instructors and logistical technicians for training courses at the Explosive Ordnance Disposal Training and Evaluation Unit One (EODTEU-ONE). O’Gara challenges the agency’s past performance evaluation of its proposal.

We deny the protest.

BACKGROUND

EODTEU-ONE is a subordinate command of the Navy Expeditionary Combat Command (NECC). The RFQ sought a support team of subject matter experts

experienced in various training and logistical support roles, as specified in 13 performance work statement (PWS) tasks.¹

The RFQ, restricted to vendors with Federal Supply Schedule contracts, contemplated issuance of a fixed-price task order for a 5-month base period with 4 option years. Quotations were to be evaluated under factors of past performance and price, with past performance weighted as the more important factor. Vendors were restricted to providing no more than three previous contracts performed within the past 5 years. Each past performance contract was to be assigned an adjectival rating based upon both relevance and quality, with a composite rating for each vendor based on the individual ratings.² The relevance of each contract was to take into consideration both magnitude (similarity to the current requirement in terms of dollar value) and scope (similarity to the requirements of the PWS tasks). Price was to be evaluated on the basis of reasonableness, with the task order being issued on a “best value” basis.

Three vendors, including O’Gara and ATS, submitted quotations and all three were originally evaluated as having highly acceptable past performance. Based on its lower price, O’Gara was issued the task order. After receiving a debriefing, ATS protested the agency’s evaluation of O’Gara’s past performance. In response to the protest, the agency advised our Office that it intended to reevaluate proposals. In light of the agency’s proposed corrective action, our Office dismissed that protest as academic (B-404901, Apr. 5, 2011).

In the reevaluation, in assessing the relevance of the offerors’ past performance references, the contracting officer was assisted by the NECC force contract

¹ These tasks included courses and instruction in: tactical training (§ 4.1); intermediate expeditionary combat skills (§ 4.2); advanced expeditionary combat skills (§ 4.3); expeditionary support element (§ 4.4); EODTEU-ONE (China Lake) exercise and training planning (§ 4.5); commander explosive ordinance disposal (EOD) Group One training and readiness support (§ 4.6); improvised explosive device (IED)/surface (§ 4.7); chemical and biological weapons of mass destruction (WMD) (§ 4.8); nuclear WMD (§ 4.9); underwater (mine countermeasures/attack charges) (§ 4.10); diesel mechanic support (§ 4.11); emergency medical technician support (§ 4.12); and robotics electronic warfare technician (§ 4.13).

² The adjectival ratings were highly acceptable (superior accomplishment, very low performance risk); acceptable (fully compliant, low performance risk); unacceptable (failure to properly accomplish requirements, very high performance risk); and neutral (no past performance history or contracting officer determined that the past performance information provided is not directly related or similar to the solicitation requirements).

management officer (CMO). The CMO assisted in evaluating the scope of the references, while the contracting officer alone evaluated magnitude.

As to scope, based on the similarity between the 13 PWS tasks and prior contract tasks, the contracting officer, with the assistance of the CMO, rated ATS's past performance as relevant, but O'Gara's as not relevant. In particular, the record shows that, to determine relevance as to scope, the agency's CMO compared the tasks/work under each past performance reference to the 13 PWS tasks outlined in the RFQ. CMO Declaration (Decl.) No. 1 at 5. Based on the similarity of the tasks called for under the prior contracts compared to the 13 PWS tasks, the CMO rated each past performance reference, on a task-by-task basis, as relevant, somewhat relevant, very limited relevance, or not relevant. Id.

The contracting officer determined that a referenced contract would be considered relevant in scope only if it was rated as relevant or somewhat relevant under at least 7 of the 13 PWS tasks. Contracting Officer Statement (COS) No. 1 at 5. With respect to O'Gara, the contracting officer determined that none of the past performance references submitted by it were relevant because none of them were deemed relevant with respect to a majority of the 13 PWS tasks. COS No. 2 at 1; Source Selection Decision (SSD) at 15-18. On the basis of these relevancy determinations, the contracting officer assigned the protester's proposal a past performance rating of neutral.

Based on the finding of relevancy for ATS's past performance references, coupled with the uniformly highly acceptable past performance questionnaire responses, the contracting officer assigned ATS's past performance an overall rating of highly acceptable. In making her source selection decision, the contracting officer made award to ATS, even though its proposed price was higher than the protester's, finding that ATS's technical superiority under the past performance factor warranted an award at its higher price. After receiving notice of the task order and being provided a debriefing, O'Gara filed this protest.

DISCUSSION

O'Gara argues that the agency misevaluated its past performance. We note at the outset that, in considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. Here, we have considered all of O'Gara's challenges to the evaluation and award, and find that none furnish a basis for questioning the award to ATS. We address below some of O'Gara's more significant arguments.

Unstated Evaluation Criteria

O’Gara asserts that the agency’s evaluation approach--based on the requirement that a past performance reference be found relevant or somewhat relevant to a majority of the PWS tasks in order to qualify as a relevant reference--represents an unstated evaluation criterion. O’Gara maintains that the agency instead should have evaluated the relevance of its references, such that O’Gara would receive credit for those aspects of its past performance that were relevant, regardless of whether that relevance extended to a majority of the PWS tasks. Protest at 27. The protester concludes that it should have received a rating other than neutral for each of its contracts.

We find no merit to this aspect of O’Gara’s protest. Here, the RFQ expressly provided for consideration of the scope of an offeror’s past performance references, and specifically defined scope as “[e]xperience in the areas defined in the PWS.” RFQ amend. 1, at 5. This evaluation provision reasonably contemplates the agency’s comparative evaluation of the similarity of those PWS tasks with the tasks covered in the vendors’ past contracts. We therefore disagree with the protester that the agency applied an unstated evaluation factor.

We also have no basis to object to the agency’s decision to base a finding of relevance on whether a vendor’s past experience was comparable to a majority of the PWS tasks. See e.g., Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4-5 (where solicitation calls for multiple, distinct services and capabilities, agency reasonably may consider relevant only those prior contracts involving services that are the same as, or similar to, those called for under the solicitation). Here, the agency found O’Gara’s past performance reflected very limited similarity, with none of its past performance references demonstrating experience in more than five PWS tasks. In this regard, as to its first contract (U.S. Marine Corps (USMC)), O’Gara’s past performance was found either somewhat relevant or relevant under five tasks; as to its second contract (Department of State (DOS)), it was found somewhat relevant to relevant under four tasks; and as to the third contract (Navy EODTEU-TWO) it was found to have only very limited relevance under three tasks. Past Performance Evaluation at 4-6. Such limited experience was reasonably considered to represent a lack of relevant past performance overall, and, thus, warranted only a neutral rating.

O’Gara further asserts that its past performance should have been rated overall relevant because all of its contracts were found similar in magnitude. See O’Gara Comments at 5. Even though all of O’Gara’s past performance contracts were evaluated as comparable in magnitude to the work solicited, we think the agency reasonably concluded that none of these contracts were sufficiently similar in scope, and thus reasonably rated O’Gara’s past performance as neutral. CMC & Maint., Inc., B-292081, May 19, 2003, 2003 CPD ¶ 107 at 3 (past performance references

of similar magnitude but dissimilar scope reasonably evaluated as neutral); Ostrom Painting & Sandblasting, Inc., supra.

O’Gara’s Past Performance Evaluation

O’Gara also takes issue with the substance of the agency’s evaluation conclusions. O’Gara asserts that the agency failed to give it credit for having relevant experience under more PWS tasks than those identified in the evaluation. O’Gara argues that if its past performance had been properly evaluated, its performance would have been rated as relevant and acceptable.

Again, we find no merit to this aspect of O’Gara’s protest. As a general matter, the evaluation of an offeror’s past performance, including relevance and scope of the performance history to be considered, is within the discretion of the contracting agency. We will not question an agency’s judgment unless it is unreasonable, inconsistent with the terms of the solicitation or undocumented. Family Entm’t Servs., Inc., d/b/a/ IMC, B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5. A protester’s mere disagreement with the agency’s evaluation does not provide a basis for sustaining a protest. Command Enters., Inc., B-293754, June 7, 2004, 2004 CPD ¶ 166 at 4.

As noted, O’Gara submitted three past performance contracts for evaluation--a USMC contract in support of special operations training; a DOS contract for providing chemical/biological/ radiological (CBR) countermeasures program training at foreign and domestic DOS installations; and a task order contract (No. 0545) for work at EODTEU-TWO to build training aids for NECC EOD training, plus instructional work. In reviewing these contracts, the CMO found each contained some tasks that were of varying degrees of relevance to some--but in no case a majority--of the PWS tasks. We have carefully reviewed the agency’s evaluation of all three contracts and conclude that it was reasonable. We discuss one for illustrative purposes.

The record shows that the CMO considered O’Gara’s work under the 0545 task order to be of very limited relevance with regard to PWS task Nos. 4.6, 4.7, and 4.8. The CMO explained that the 0545 work primarily concerned the development and construction of IED and UXO training aids and the purchase of training aids, with assistance in training scenarios, and budget management. CMO Decl. No. 1 at 6. These limited relevance ratings were based on the CMO’s finding that O’Gara’s experience only correlated with a limited number of the requirements under each of the three identified tasks. Further, the work under the EODTEU-TWO contract was not deemed comparable to the current requirement, in part, because O’Gara performed only a small part of the requirement, and the bulk of the training work under that contract was performed by another contractor. Id.

O’Gara asserts that the CMO should have considered its work on the EODTEU-TWO contract relevant under the tactical instruction tasks (PWS task Nos. 4.1-4.4) because the general nature of instruction performed by EOD instructors is very similar to the PWS tasks. Protest, exh. 5, at 54, 56. It also asserts that the CMO unreasonably failed to take into consideration its certified instructors who handled classroom and laboratory instruction in areas such as “[s]urface IED’s, WMD/Chem-Bio, and Nuc’s.” O’Gara Proposal at 8. In this regard, it notes that its work constructing training aids was expanded to include classroom instruction in these areas, as evidenced by a letter of recommendation from the commander of EODTEU-TWO. Commander Letter at 1.

The CMO explains that his relevance assessment was based on a review of O’Gara’s proposal information. The record shows that the CMO evaluated O’Gara’s 0545 work as not relevant to PWS task Nos. 4.1-4.4 because these tactical training courses and the other EOD training courses “involve completely different mission sets requiring different skills and qualifications.” Past Performance Evaluation at 4; CMO Decl. No. 1 at 5. Additionally, although the EODTEU-TWO commander verified that O’Gara performed formal classroom instruction, he explained that that instruction was limited. See Commander Decl. at 1. While O’Gara’s proposal stated it had experience in “WMD/Chem-Bio, and Nucs” instruction, the commander stated that it did not provide any training in these areas. Id. As explained by the CMO, O’Gara’s instructional experience would make its work relevant under PWS task No. 4.7 (IED surface instruction), but not under any of the other tasks. CMO Decl. No. 3 at 4. In sum, given the CMO’s familiarity with the requirements of the task order, he had no basis for assigning O’Gara credit for classroom instruction under any of the PWS tasks.

In the final analysis, based on O’Gara’s limited reference to its experience with instruction in its proposal, along with its inclusion of a letter of reference that does not fully validate that experience, the CMO reasonably concluded that O’Gara’s limited experience under 3 of 13 PWS tasks was insufficient to warrant a relevant rating. An offeror is responsible for the contents of its proposal and ensuring it provides complete information as part of an adequately written proposal. See Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3.³ Here,

³ O’Gara asserts that the agency also should have considered its past performance under a subsequent delivery order (No. 1771, issued under the same contract as No. 0545); O’Gara also submitted declarations during the course of this protest to support its claims of instructional experience under both delivery orders. As noted, however, an offeror is responsible for the contents of its proposal, and here, O’Gara did not identify its experience under delivery order No. 1771, or offer any supporting explanation about that effort as part of its proposal. See Carlson Wagonlit Travel, supra.

although O’Gara asserts that its experience was more extensive than what it was given credit for in the evaluation, it has not demonstrated that that experience was detailed in its proposal. We therefore deny this aspect of its protest.

Source Selection Decision

Finally, O’Gara asserts that the agency’s source selection determination was flawed. Specifically, it argues that the decision was not adequately supported and that its lower-priced quotation, with a neutral past performance rating, represented the best value to the government.

The record shows that the source selection was properly supported and reasonable. The RFQ provided that past performance was more important than price and the SSD compared ATS’s proposal, rated highly acceptable for past performance, with O’Gara’s and the third vendor’s quotations, both of which were rated neutral. SSD at 29. The contracting officer specifically noted that the RFQ contained many complex tasks requiring specialized experience and skill sets to accomplish the mission, and that ATS’s highly acceptable past performance record represented a very low performance risk. Id. When ATS’s record was compared with O’Gara’s lack of relevant past performance experience and unknown risk, she determined that paying a 19 percent price premium was warranted. Id.

Where, as here, the past performance factor is more important than price, even though a neutral past performance rating may not be considered favorably or unfavorably, an agency’s price/technical tradeoff may determine that a high past performance rating is worth more than a neutral past performance rating. See CMC & Maint., Inc., supra, at 4. We conclude that the agency’s source selection was reasonable and consistent with the RFQ source selection criteria.

The protest is denied.

Lynn H. Gibson
General Counsel